S.B. Civil Writ Petition No.1556/2004.
(Rameshwar Lal Vs. Municipal Board, Nagaur & Others)

DATE OF ORDER : May 01, 2007

HON'BLE MR. JUSTICE GOPAL KRISHAN VYAS

Mr. G.R. Punia for the petitioner.
Mr. Sunil Mehta for the non-petitioner(s).

BY THE COURT :

In this writ petition, the petitioner is challenging resolution dated 14.09.1999 whereby the respondent Municipal Board passed resolution to allot 240 sq ft land of public way to respondent Ram Vallabh for consideration and further the resolution dated 19.06.2001 whereby it resolved to allot the remaining land of the public way to respondent Ram Vallabh.

Upon perusal of the petition it has come out that both the resolutions were challenged by the petitioner before the District Collector, Nagaur by filing separate applications under Section 80 (2) of the Rajasthan Municipalities Act, 1959. Not only that, the petitioner also filed revision petition under Section 300 of the Act before the Divisional Commissioner, Ajmer challenging the said resolutions. The aforesaid applications filed by the petitioner

under Section 80(2) of the Act came to be rejected by the District Collector vide order dated 22.07.2003 observing that the petitioner has already filed revision petition before the Divisional Commissioner, therefore, two proceedings cannot run simultaneously in respect of the same and identical remedy.

The revision petition filed by the petitioner under Section 300 of the Act was decided by the Divisional Commissioner vide order dated 03.11.2003 in his absence wherein both the orders were under challenge.

The contention of learned counsel for the petitioner is that the learned Divisional Commissioner has dismissed the revision petition on technical grounds and, that too, in his absence. It is submitted by learned counsel for the petitioner that the Divisional Commissioner, Ajmer as welll as District Collector, Nagaur committed illegality in not deciding the case on merit and both the authorities have dismissed the case only for technical grounds. It is contended by learned counsel for the petitioner that the petitioner cannot be left remedyless because in this case the municipality has allotted land of public way to respondent Ram Vallabh and that order was challenged by the petitioner initially before the District Collector and then before the Divisional Commissioner, Ajmer.

It is true that both the above orders are not under

challenge before this Court in the writ petition filed by the petitioner; but, the resolutions which were sought to be challenged before the authorities have been challenged in the writ petition. Learned counsel for the respondents vehemently contended that if both these orders are not under challenge then this Court should not interfere in this case because upon merit no case is made out by the petitioner.

I have perused the entire record. It is obvious that before challenging resolutions dated 14.09.1999 abnd 19.06.2001, applications under Section 80(2) of the Act as well as revision petition under Section 300 of the Act were filed by the petitioner, however, the same were dismissed on mere technical aspects of the matter without considering, in any manner, the merit of the case. Upon perusal of the order passed by the Divisional Commissioner in the revision petition filed by the petitioner under Section 300 it is revealed that the said revision petition was dismissed on the ground that no court-fee was affixed by the petitioner and certified copies of the orders were also not annexed with the revision petition. It is obvious from the order passed by the Divisional Commissioner that the revision petition has been dismissed on technical ground without even providing opportunity to the petitioner. It is thus obvious that the concerned authority passed order in violation of principles of

natural justice and has not provided any opportunity to the petitioner even to remove the defects, if any.

In the circumstances, in the interest of justice, the order dated 03.11.2003 passed by the Divisional Commissioner is set aside. The petitioner is directed to appear before the Divisional Commissioner, Ajmer. The Divisional Commissioner, Ajmer shall provide opportunity to the petitioner to remove the defects as observed in the order and, if question of limitation arises, the petitioner shall be given opportunity to file application for condonation of delay. After deciding the question of limitation, if arises in the matter, the Divisional Commissioner shall decide the revision petition after hearing the parties, in accordance with law.

With aforesaid direction, the writ petition is disposed of.

(Gopal Krishan Vyas) J.